that are outside of the wireline rate center into which they wish to port will not be able to port their numbers to wireline. NANC Report § 3.1.2 & App. D. For these reasons as well, PCS service is not substitutable for wireline local service.[13/] The Commission recently concluded that, while wireless substitution for wireline may occur in the future, "it is hard to say exactly how long it will take or how much substitution will occur." Third Annual CMRS Competition Report, FCC 98-91, at 27 (rel. June 11, 1998). One thing is clear: today, PCS carriers are not "competing providers" as required under Track A.[14/]

II. BELLSOUTH CONTINUES TO PLACE DISCRIMINATORY AND UNREASONABLE CONDITIONS ON CLECS' ABILITY TO OBTAIN UNBUNDLED ELEMENTS, AND REFUSES TO PROVIDE SOME ELEMENTS AT ALL

A. CLECs' Ability to Combine Elements

BellSouth is not providing "[n]ondiscriminatory access to network elements in accordance with the requirements of Section[] 251(c)(3)." 47 U.S.C. § 271(c)(2)(B)(ii). In the case of a "Track A"

13/ Attempting to show that consumers in Louisiana have nonetheless subscribed to PCS as a substitute for wireline service, BellSouth relies on a survey conducted on its behalf. See BST Br. at 12-13. This survey evidence is unreliable. The results are based on the responses of 202 self-selected, not randomly selected, PCS subscribers. Because BellSouth did not attach a copy of the advertisement to which these subscribers responded, it is not clear that the ad was designed to avoid eliciting a disproportionate number of responses from any particular group of subscribers, such as high-volume users of PCS. Moreover, although the questionnaire is not attached either, it appears that respondents were given a choice between five statements that might summarize their main reasons for choosing PCS. Three of the five choices involved substitution of PCS for wireline service. Leading questions, such as this, generally produce unreliable survey results. See, e.g., American Home Products, Inc. v. Johnson & Johnson, 654 F. Supp. 568, 581 (S.D.N.Y. 1987). Even having been presented with three choices of "substitution behavior," the great majority of respondents answered that they did not choose PCS as an alternative to wireline service. Only 16% of respondents named one of the "substitution behaviors" as the main reason for choosing PCS -- one percentage point *less* than did so when a similar study was conducted for BellSouth in August 1997. See BST M/A/R/C Study, at Tables 3-5 (App. A, Tab 6).

14/ Moreover, PCS providers do not offer "telephone exchange service" within the meaning of section 271. Section 271 defines "telephone exchange service" by referencing section 153(47)(A), which defines it as: "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge." PCS does not generally meet this definition. As the Cellular Telephone Industry Association has argued to the Commission, wireless service does not generally operate within a telephone exchange or within an exchange area. CTIA Brief in CC Docket No. 95-116, Number Portability, at 13 (ex. L).

application, this access must be provided "pursuant to one or more [interconnection] agreements." 47 U.S.C. § 271(c)(2)(A)(i)(I). In particular, Section 251(c)(3) requires all telecommunication carriers "to provide . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." By vacating 47 C.F.R. § 51.315(b), the Eighth Circuit has made clear that at least under section 251 of the Act, incumbent carriers may offer in separate form elements combined in their network -- that is, may tear apart network elements that are combined together in their network -- but only if it is possible in a nondiscriminatory manner for competitors to put the elements back together themselves "at any technically feasible point." Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted, AT&T Corp. v. Iowa Utils. Bd., 118 S. Ct. 879 (1998).

BellSouth has taken advantage of the Eighth Circuit ruling and no longer provides certain elements in combination. But, having insisted on taking network elements apart, it has not provided CLECs with the ability to put the elements back together again in a nondiscriminatory manner at any technically feasible point. Most particularly, BellSouth has not provided a reasonable method for CLECs to lease, and combine with BellSouth's switching, the element that is the most difficult to replicate and that most effectively preserves BellSouth's continuing monopoly over local service in Louisiana -- the local loop.

BellSouth's refusal to offer the loop and switch in combination, coupled with its failure to provide a nondiscriminatory method to recombine these elements at any technically feasible point, is no mere technicality. As the DOJ determined in evaluating BellSouth's South Carolina application, the CLECs' ability to offer service through combined elements leased from the BOCs, including especially the loop and the switch, is "enormously important to promoting competition." DOJ SC Eval. at 24. "If unbundled elements are provided in a manner that requires CLECs to incur large costs in order to combine them, many customers -- especially residential customers -- may not have any facilities-based

competitive alternative for local service" for the foreseeable future. Id. That is why the DOJ concluded that BellSouth's collocation proposal -- virtually the same proposal it offers here -- poses "a substantial threat to the viability of competition using unbundled network elements, one of the key entry strategies established by the 1996 Act." Id. at 25. For the reasons expressed by the DOJ, as well as numerous other reasons discussed below, a condition that CLECs collocate in order to combine elements is discriminatory on its face under any circumstances.

The Commission has also recognized the competitive significance of combinations, concluding that "the ability of new entrants to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in the local telecommunications market." SC Order ¶ 195. Thus the Commission "emphasize[d] the importance of ensuring that BOC applicants comply with the requirements that they provide nondiscriminatory access to network elements in a manner that allows competing providers to combine such network elements." Id. ¶ 196.

The passing months have done nothing to suggest that the agencies were wrong in assessing the importance of combinations. Without access to combined elements or reasonable and nondiscriminatory access to BellSouth's network in order to combine elements themselves, CLECs have been unable to enter the local markets, especially local residential markets, in Louisiana and across the country. See Decl. of Marcel Henry, ¶ 17 (ex. A). It is not hard to see why this is so. For over a century, ratepayers have funded the construction of an extraordinary ubiquitous network that is owned and controlled by the BOCs. It cannot be replicated by CLECs over the short or medium term. CLECs do not have the hundreds of billions of dollars of capital that would be needed to duplicate the local network, and it would be inefficient to compete in this manner. Id. The BOCs have the advantage of tremendous efficiencies of scope and scale, and unless those efficiencies are shared, there will be no local residential competition. Id. This is no longer a matter for speculation. The local markets have been theoretically

opened as a legal matter for more than two years, but no BOC is yet willing to lease network elements in combination or allow CLECs to combine elements on reasonable terms. The result is that there is no meaningful local competition anywhere in the country, and most certainly none in Louisiana. Id.

Combinations are critical for the development of competition for two reasons. First, and most importantly, the use of combinations of elements is the only method that supports the build-out of competing facilities over time, which is why Congress included this option in section 251(c). Combinations provide a vital transition mechanism that allows CLECs to achieve economies of scale while they are building out wide-scale networks of their own. Id. ¶ 18. Without the practical ability to combine unbundled elements, what little facilities-based competition there is has developed in urban areas among high-volume business customers, and it will take time for CLECs like MCI to develop a sufficiently robust network serving these business customers to enable them to begin to offer urban and suburban residential customers local service through those same facilities. See id.

The difficulty of building a residential customer base in this manner is exacerbated by the fact that it is not possible to target a mass-market product like residential phone service to narrow bands of customers that are clustered around CLEC switches. Id. Residential service by its nature must be offered on a widespread basis and so demands a facilities-based service delivery method with similar reach. Id. Building competitive residential local phone service without the use of combinations of ILEC elements would be difficult and time-consuming, and might never happen. That is why MCI, whose goal is to be the nation's leading facilities-based alternative to the BOC, has been forced to concentrate on the urban business market until such time as it is possible to lease elements in combination from the BOCs or have access to BOC networks on reasonable and nondiscriminatory terms to recombine what the BOCs have torn apart. Combinations make the development of ubiquitous facilities-based competition possible because they allow the new entrant to construct its own facilities as such construction becomes warranted by traffic density (and by changes in technology). Combinations are not, as BellSouth insists, some

illicit alternative to "real" facilities-based competition, but the only way such competition can possibly develop, especially for residential customers. Id. ¶ 19. As we show below, such competition will never develop in Louisiana as long as BellSouth continues to refuse to provide a nondiscriminatory method for CLECs to combine BellSouth's loops and switches.

Second, because they allow CLECs to enter the market using elements leased entirely from the BOCs (or from other third party providers), combinations allow for prompt entry. Id. ¶ 18. As the Commission has explained, this will lead to immediate advantages to residential customers, because the new entrant leasing elements "has the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings," SC Order ¶ 195, an ability the reseller lacks.

Because of the importance of combinations, the Commission faulted BellSouth for not making clear precisely how it intended to allow CLECs to combine loop and switch (or whether it in fact intended to separate them in the first place). Id. ¶ 197. At least BellSouth now is clear. It will separate the two elements (even if it means making its IDLC loops unavailable to CLECs), and it will not allow CLECs to recombine the elements through any method except collocation. Now it is crystal clear that BellSouth has no intention of allowing CLECs nondiscriminatory access to elements at any technically feasible point.

Responding to requests from the BOCs for guidance, both the Commission and DOJ have expressed doubts that collocation standing alone could under any circumstances satisfy the BOCs' obligation to provide nondiscriminatory access to loop and switch at any technically feasible point. DOJ La. Eval. at 14-15; SC Order ¶ 199. The intervening months should remove all doubts -- collocation simply is too costly, and erects too substantial a barrier to entry, ever to be an acceptable only choice for combination. See Henry Decl. ¶ 20-24. This application provides the appropriate vehicle to make clear to the BOCs that even if their collocation offering otherwise satisfied their statutory obligation, this

offering would be inadequate as a means of nondiscriminatory access to allow CLECs to combine the loop and switch.[15/]

Collocation is offered as the only way to connect every loop in the state to the switching function in all central offices throughout Louisiana. If there ever were to be widespread residential competition in Louisiana, BellSouth would have to process tens of thousands of loops through collocations on a daily basis. Id. ¶ 20. In a mass market setting, where customers change carriers as a result of advertising campaigns and other kinds of mass marketing, competition will not develop in a slow, even manner, but in bursts. Id. BellSouth has offered no evidence that it could handle the kind of capacity that it would have to handle in a mass market setting. Certainly there is no practical experience on which the regulators may rely. BellSouth has completed only a handful of collocations -- two physical and six virtual -- over the last two years in Louisiana. See Milner Aff. ¶¶ 27, 31 (BST App. A, Tab 14). And, contrary to the explicit direction the Commission provided -- that BellSouth must show it can "timely provide in actual practice, collocation as the means for new entrants to combine network elements" (SC Order ¶ 198) -- BellSouth offers no practical experience in combining loop and switch at a collocation. All that BellSouth says on this score is that it anticipates no problem because its own loops are connected to its switch by cross-connects, the device it proposes to use in collocation cages. But this is irrelevant. BellSouth acquires customers gradually; its experience with its own customers is of only the most limited relevance in evaluating its ability to perform in a competitive environment. See Henry Decl. ¶ 20.

15/ This conclusion has already been reached in proceedings before state commissions. See, e.g., Consolidated Petitions of New England Tel. & Tel. Co. d/b/a Bell Atlantic-Massachusetts, at 13-14 (Phase 4-E, Mass. Dep't of Pub. Util. March 13, 1998) (ex. M); Commission Recommendation, Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market, No. 16251 (Texas PUC June 1, 1998) (requiring Southwestern Bell to provide at least the following three methods to allow CLECs to combine elements: 1) virtual collocation of cross-connects at cost-based rates, 2) access to recent change capability of the switch to combine loop-port combinations, and 3) electronic access such as Digital Cross Connect for combining loop and port at cost based rates, where available; further ordering collaborative process to consider additional methods for combining elements) (ex. N).

BellSouth's only statement about its ability to provide the necessary cross-connections is that "there is no need for additional technicians." Milner Aff. ¶ 25. This suggests that BellSouth has not even begun to think seriously about the steps it would need to take if it were serious about opening its local market to competition.

Without practical experience to evaluate, the Commission has stated that it will look to "evidence such as carrier-to-carrier testing, independent third party testing, and internal testing to demonstrate [the BOC's] ability to provide a checklist item." SC Order ¶¶ 78. MCI continues to have serious reservations about the relevance of such evidence -- we doubt the wisdom of interpreting "provide" to mean "test." But just as in its deficient South Carolina application, BellSouth again relies on nothing at all to support its claim that collocation would work and would give CLECs a meaningful opportunity to compete. See Henry Decl. ¶ 20. Under any conceivable legal standard, and certainly under the legal standard the Commission used in rejecting BellSouth's last application, BellSouth has not shown it has "provided" access to network elements in commercially reasonable quantities through its collocation offering. Every defect the Commission previously identified about BellSouth's previous application is equally present in the instant application:

> BellSouth has made no showing that there is actual commercial usage of physical collocation anywhere in its region for the purpose of recombining unbundled network elements. Although BellSouth claims experience in providing physical collocation, it makes no showing that any of the existing collocation arrangements are or can be used to combine unbundled network elements. . . . BellSouth has also made no showing that it has performed any testing of physical collocation for the purpose of recombining network elements. Nor does the record indicate that BellSouth has tested its ability to accept orders for various elements and coordinate those orders in an way that would provide unbundled network elements for combination by new entrants in collocation space. Although BellSouth argues that there should be no difference between running an unbundled loop to a collocation space to be attached to a new entrant's equipment for transmission to a new entrant's switch and running a loop and a switch port to the same space for combining, BellSouth has provided no evidence to substantiate this allegation.

SC Order ¶ 205 (footnotes omitted); see also DOJ SC Eval. at 23 ("BellSouth has not yet demonstrated that it possesses the technical capability to satisfy this requirement in a reliable, commercially acceptable manner").

BellSouth's failure to grapple with the practical problems created by its decision to tear loop and switch apart, and to require collocation to put them back together, points to a larger problem. The truth is that even a perfectly designed collocation system can never adequately function as the only way to combine loops and switches pointlessly taken apart by the BOCs. See Henry Decl. ¶ 21.[16/] The Commission should take this opportunity to make clear that collocation can never be the only offered method to combine network elements.[17/]

Purely as a legal matter, BellSouth's proposal is not consistent with the requirements of section 251(c)(3). That provision requires carriers to make elements available at "any technically feasible point" (emphasis added). BellSouth instead offers access at the one technically feasible point it is willing to make available, and it expressly rules out as "unacceptable," for example, access at the main distribution frame. Milner Aff. ¶ 43. BellSouth does not comply with § 251(c)(3) (and so does not comply with the checklist), when it denies access to elements at any technically feasible point. Nor does collocation allow CLECs to combine elements "without contributing any facilities of their own," DOJ SC

16/ Of course, the impact of BellSouth's combination proposal is not limited to combinations of loop and switch. Apparently BellSouth also requires CLECs to collocate if they wish to make use of any and all combinations other than the six specified by BellSouth. See Varner Aff. ¶¶ 68-70. Just as collocation makes a loop-switch combination commercially impossible, it also makes it impossible as a practical matter for CLECs to obtain these other combinations. The practical unavailability of these combinations further limits the choices available to CLECs as they seek to break open a tightly shut monopoly market.

17/ As a Pennsylvania administrative law judge recently held, requiring CLECs to collocate in order to recombine network elements "imposes unnecessary costs on the CLECs" and "serves no legitimate technical purpose." See Petition of Bell Atlantic-Pennsylvania, Inc. for a Determination of Whether the Provision of Business Telecommunications Services is Competitive under Chapter 30 of the Public Utility Code, Pennsylvania Public Utility Commission Docket No. P-00971307, Recommended Decision, at 27 & n.5 (July 24, 1998) (ex. O).

Eval. at 22, as required by the Eighth Circuit decision upon which BellSouth relies. See SC Order ¶ 199. The whole point of collocation is that it is a place where CLECs can install their own equipment.

Most of all, the access BellSouth claims it will provide through collocation is quite plainly the most costly, most discriminatory and most anticompetitive form of access available. See Henry Decl. ¶ 21-22. Indeed, as the DOJ found, "a [collocation] requirement would entail substantial cost and delay for CLECs wishing to use combinations of elements." DOJ SC Eval. at 25.

Both physical and virtual collocation are unreasonable and discriminatory requirements. First, collocation necessarily requires substantial up-front costs that may or may not be recovered depending upon the competitor's ability to attract customers from a particular end-office. See Henry Decl. ¶ 22. Second, collocation necessarily requires additional cross-connects and senselessly introduces many additional points of failure into the network. See id. It makes it far more difficult to isolate trouble on the network. See id. And the networking required to migrate a customer between CLECs requires twice as many unnecessary cross-connects. See id. Third, whether or not the collocation frame is pre-wired, as BellSouth suggests, for each line BellSouth technicians must make physical changes to both the port and the loop connections at the main distribution frame, and then must make two sets of additional cross-connects to its side of the collocation rack, a small piece of equipment that cannot conceivably bear the amount of traffic that would be required to have collocation work at a commercially viable level. See id. In this regard, BellSouth argues that the main distribution frame in many end offices is as long as a building and so is long enough to sustain many technicians. See Milner Aff. ¶ 45. Even if this is true, it suggests at most only that direct access is feasible, but it hardly supports BellSouth's argument about collocation -- the bottleneck occurs at BellSouth's side of the collocation rack, not at the main distribution frame.

Moreover, even if, arguendo, provision of access through collocation alone could ever satisfy the BOCs' checklist obligation, and even if BellSouth had submitted proof that it had successfully used

collocation on a commercially significant scale for purposes of forcing CLECs to recombine, BellSouth again provides no evidence that its interconnection agreements contain "definite terms and conditions for recombining network elements." SC Order ¶ 197. The Commission found BellSouth's previous applications defective because neither the contracts BellSouth relied upon under Track A nor BellSouth's SGAT (assuming arguendo that the SGAT terms are relevant in this Track A application) contained specific terms governing the cost of collocation or the time interval for implementing a collocation request. Id. BellSouth has not corrected these deficiencies.

In rejecting BellSouth's previous application, the Commission ruled that "BellSouth's SGAT [is] deficient because its collocation rates do not include any rates for the space preparation fee." Id. ¶ 204. This critical price term -- the cost of making the necessary improvements to the physical space that largely determine the ultimate cost of collocation -- still is set on an individual case basis ("ICB"). See Tipton Aff. Ex. 2 (Collocation Handbook), at 19. That is, it is not set at all. BellSouth is quite capable of setting a price for this work -- it has done so in Georgia. See Tipton Aff. ¶ 9. BellSouth nevertheless has persuaded the LPSC to allow this item to remain open, and apparently is asking the Commission to reverse its prior rejection of this obviously anticompetitive arrangement. But the Commission was on solid ground when it ruled that "[t]he absence of any space preparation rates creates uncertainty for new entrants and requires further negotiation, undermining the premise of an SGAT, which is to contain sufficiently specific terms and conditions such that checklist items are generally offered and available to all interested carriers at concrete terms, rather than left largely to future negotiation." SC Order ¶ 204 (footnotes omitted).

Neither has BellSouth corrected the other major defect identified in its earlier application -- the absence of enforceable time limits in the interconnection agreements it relies on to support its Track A application. In its previous applications, BellSouth promised completion within "two to four months," and the Commission and DOJ rejected those applications because, notwithstanding those promises,

"BellSouth's SGAT does not commit BellSouth to any particular interval," id. ¶ 202, and section 271 requires more than unenforceable promises.

To be sure, BellSouth points to terms contained in its Collocation Handbook, but this is insufficient as a matter of law. BellSouth is not in any way bound to follow any term in the Handbook and can change the nonbinding terms at will (even if it were to notify the PSC of the unilateral change). The handbook, in bold type in its preface, states that "this document . . does not represent a binding agreement in whole or in part between BellSouth and subscribers of BellSouth's Collocation services." See Tipton Aff., Ex. 2 (Collocation Handbook), at 4. BellSouth cannot rely on terms contained in the Handbook to satisfy its checklist obligations. To conclude otherwise would nullify the Act's requirement that Track A be satisfied only through approved interconnection agreements. See 47 U.S.C § 271(c)(2)(A)(i)(I).

In addition, even the nonbinding Handbook terms are woefully inadequate. When there are more than four collocation requests, BellSouth offers the following interval: 30 days to respond to an application (§ 3.3), unlimited time to arrange equipment purchase (id.), additional unlimited time to obtain licenses (§ 3.5), and then 180 days to complete the order. The two to four month interval promised in its earlier application has slipped to some indefinite time period in excess of 210 days.

B. BellSouth's Refusal to Provide IDLC

BellSouth's insistence on separating elements already combined in its network also has led it to deny CLECs access to its integrated digital loop carrier ("IDLC") facilities. Like every other local carrier, BellSouth turned to IDLC instead of universal digital loop carrier facilities ("UDLC") when it began relying primarily on digital switches, to provide high-speed, efficient transmission for longer loops. Unlike UDLC, which was developed in the 1970s to operate with analog switches, IDLC was developed to work with now ubiquitous digital switches and provides clearer signals, faster, and at far lower cost. In addition, IDLC is far more capable of supporting the new digital services that are the

fastest growing local services. Thus, BellSouth today, like other incumbents, deploys some type of IDLC technology when installing a digital loop carrier to serve its own customers. Hearing Transcript at 565-566 (examination of Caldwell) (BST App. C-3, Tab 274).

Yet, although Bellsouth readily admits that it has IDLC facilities in its network, BST Br. at 43, BellSouth refuses to make these available as unbundled network elements to its competitors. Id. Instead, as discussed below, if subscribers now served by IDLC facilities choose a competitive local provider, BellSouth agrees only to provide less satisfactory substitutes. No technical impediment prevents BellSouth from providing IDLC facilities to its competitors in the same manner in which it provisions them for itself. When its own subscribers are served by IDLC facilities, BellSouth provisions individual loops by performing connection and disconnection electronically in the switch. This provides BellSouth control of each loop connection while affording it the advantages of IDLC technology: higher efficiency and the ability to provide enhanced digital services.

BellSouth's ground for refusing to provide these facilities is not even consistent with its position elsewhere. BellSouth's refusal is based solely on the fact that IDLC facilities deliver groups of subscriber loops to each switching port, and therefore that it is not technically feasible to physically separate an individual loop connection from the port. However, when BellSouth determined that other parts of its network could not be feasibly separated, it felt obliged -- rightly -- to offer them in combination. See Varner Aff. ¶ 68 ("The only technically feasible method to offer common transport is to combine it with the switch port and a cross connect. Consequently, BellSouth will combine the port and common transport."). For the same reason, BellSouth offers other parts of the network in combination as well. See Varner Aff. ¶ 68; BST Br. at 39. BellSouth's refusal to provide IDLC facilities to competitive providers is inconsistent with its own position and with its obligation under section 251(c)(3).

The substitutes BellSouth relies on instead would place its competitors at a serious and long-term disadvantage. The primary substitute BellSouth offers is to provide competitors with the very type of facility BellSouth decommissioned as out-of-date when it chose to install IDLC in the first place: i.e., a simple copper loop, installed in the past but now unused. See Milner Aff. ¶ 54. Copper loops are not only less efficient than IDLC facilities for longer distances, but long copper loops cannot deliver high quality signals or enhanced services. Decl. of Glen Grochowski ¶¶ 5-6 (ex. C). Voice signals are degraded, full of crackles and hisses. Id. at ¶ 5. The additional noise causes modems to slow down the transmission speed of data. Id. at ¶ 6. Long copper loops are also unable to provide enhanced services, such as ISDN and ADSL, both of which have distance limitations on analog copper wire. See id. at ¶ 13 (ADSL "loses much of its speed after traveling 12,000 feet on copper, and stops working altogether at 18,000 feet"); ¶ 7 (ISDN does not work on copper loop longer than 18,000 feet). BellSouth itself acknowledges that long copper loops do not permit adequate quality telephone service,[18/] and that they have the effect of preventing modems from operating at their maximum speed. See Bowman Testimony on behalf of BellSouth at 8-9 (SC PSC Docket No. 97-239-C, Feb. 17, 1998) (ex. Q). Finally, additional dimunitions in quality would result if the copper loop was an outmoded type such as aircore or had cuts, abrasions, poor splices, or water intrusion within the insulation. Grochowski Decl. ¶ 5. Concern about such problems is not at all far-fetched because the copper loop BellSouth is offering is old copper that BellSouth no longer has a use for. See Milner Aff. ¶ 54.

The second substitute that BellSouth offers, the Next Generation Digitial Loop Carrier ("NGDLC") substitute, has, as BellSouth itself admits, very limited practical application. Milner Aff.

18/ See Bowman Rebuttal Testimony on behalf of BellSouth at 5 (South Carolina PSC Docket No. 97-239-C, Mar. 2, 1998) (ex. P). Although MCI and BellSouth do not agree on precisely how long is too long for these purposes, there is no disagreement that at certain lengths the quality of voice and modem traffic is seriously degraded, and that these subscribers who are currently served on IDLC are most likely to be located at substantial distances from central offices.

¶ 55. It is applicable only to NGDLC facilities, and based on BellSouth's statement that only a small percentage of its lines are served by NGDLC, id. at ¶ 56, this would rarely be an option for competitors under any circumstances. However, BellSouth has ensured that this option is even less available by claiming for itself an unfettered power to designate unused NGDLC circuits as "reserved" for its own future use. Milner Aff. ¶¶ 57-58. Moreover, there are some inherent limitations to NGDLC that will interfere with this option when demand increases. An NGDLC system has the capacity to serve only seven or eight switches. If ten or twenty different competitors win customers served by the same NGDLC system, BellSouth's substitute will not be able to accommodate them. There are also limits to the number of DS-1s that an NGDLC system can carry that further restrict the ability of this substitute to provide adequate service to competitors. Grochowski Decl. ¶ 10.

The third and fourth substitutes offered by BellSouth require competitors to pay for construction of new equipment rather than simply leasing the existing IDLC equipment that BellSouth uses. Milner Aff. ¶ 59. The third substitute requires competitors to pay for either some or all of the cost of NGDLC equipment. Id. BellSouth remains extremely vague even on what costs would be covered, much less what the price would be -- precisely the same type of defect the Commission found in BellSouth's prior applications. SC Order ¶ 204 (discussing competitive impact of absence of prices for collocation). The fourth substitute offered by BellSouth requires competitors to pay for construction of UDLC equipment rather than leasing the existing IDLC equipment that BellSouth uses. Id. Again, BellSouth has not provided any prices -- a fatal inadequacy. Significantly, BellSouth's substitution of an outmoded technology for competitors where it uses the more up-to-date IDLC ensures that BellSouth's competitors will only be able to offer worse service at a higher cost than BellSouth itself. The use of UDLC results in slower transmission of data through the customers' modems because UDLC technology requires multiple analog/digital conversions. See Bellcore Memorandum TM-25704, Guidelines for High Speed Analog Data Transmission in the Switched Network; Carter Reply Testimony, CPUC Docket No. 93-04-003 at

11 (April 27, 1998) (ex. R). UDLC is also almost three times more expensive to build and operate than IDLC. See Tr. SCPSC Docket No. 97-374-C at 247-248 (Ernest M. Carter, witness) (Att. 5 to Decl. of Don Wood (ex. D)). As the directors of the Tennessee Regulatory Authority concluded, requiring competitors to use UDLC facilities while BellSouth uses IDLC is discriminatory. See TRA Directors' Conference, Docket No. 97-01262 at 26-32 (June 30, 1998) (ex. T).

Thus, BellSouth refuses to make critical network facilities available to competitors and will only agree to provide poor substitutes instead. BellSouth has not shown that it can "timely provide" any of these alternatives "in actual practice" and in commercially significant quantities. See SC Order ¶ 198. These defects would doom its competitors to being able to offer only lower quality, more expensive service than BellSouth itself. This is a blatant attempt by BellSouth to secure its monopoly position and, alone, justifies denial of section 271 authorization.

C. Barriers to CLECs' Use of xDSL Facilities

BellSouth also has failed to make available to competitors key xDSL facilities for serving data and voice traffic. Data traffic is one of the fastest growing segments in the telecommunications market.[19/] BellSouth, however, has not made xDSL facilities available to competitors as they are available to BellSouth. BellSouth has offered to make available those loops that are appropriate, without modification, to be conditioned for xDSL use, at an exorbitant non-recurring charge of $343.13 to $361.45 per loop. See infra Part VII.B.4. Almost half of this charge is to determine whether the loop is appropriate in the first place, and this information is only available on a customer by customer basis. BellSouth has not offered to provide or set rates for loops that require any type of minor modification such as removal of loading coils or minimizing of bridge taps, although BellSouth easily can, and

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19/ BellSouth attributed its huge increase in net income during the second quarter of 1998 to rapid growth in data and digital services. "BellSouth Rings Up a Record Quarter," Atlanta Journal & Constitution, at 1B (July 21, 1998). BellSouth intends to offer ADSL services to Atlanta-area customers beginning next month. "Sprint Aims to Offer Service via BellSouth," Atlanta Journal & Constitution, at 3F (July 16, 1998).

doubtless will, provide this to itself when such customers ask for xDSL service. Further, BellSouth has not offered to provide or set rates for use of a BellSouth Digital Subscriber Line Access Multiplexer ("DSLAM"), a critical piece of technology attached to the central office end of a copper pair that enables it to have xDSL capability.

BellSouth has also not offered, or set rates for, use of DSLAM or other xDSL equipment used at a remote terminal to provide xDSL service to customers served by a digital loop carrier system. To the contrary, BellSouth has expressly refused to make IDLC facilities available to competitors and has limited competitors to substitutes that in many cases will not support xDSL service at all. See Grochowski Decl. ¶¶ 12-15. Thus, BellSouth has placed itself in a position where it can provide high-speed data xDSL service to its own IDLC customers while precluding its competitors from doing so.

BellSouth is able to use xDSL technology in conjunction with IDLC technology by adding a line card or xDSL modem at the remote terminal. Both voice and data are then transmitted back to the central office on the existing fiber using different transmission bandwidths. Id. ¶ 14. BellSouth has not offered to make this equipment available to competitors, much less set rates and terms for leasing. Further, BellSouth's position that IDLC facilities cannot be used at all by competitors but that BellSouth will substitute old copper instead where available consigns competitors to a technology that in many cases simply will not support xDSL service because of the length of copper wiring involved. Id. ¶ 13. Because of the great number of residential customers served through IDLC systems, this is an important means of providing data service, especially in suburban areas.

There is no technical reason for BellSouth to decline to lease xDSL functionality. After all, if it were not technically feasible to do, BellSouth and the other BOCs would not be asking for forbearance from this requirement through their petitions pursuant to section 706 of the Act. BellSouth simply declines to do so even though it had not received any relief from section 251(c) when it filed its application. Consequently, its offer to provide "ADSL conditioned loops" will not allow CLECs to

compete in what is likely to be a critical segment of the telecommunications market in the coming years. By placing so many obstacles in the way of UNE provision of xDSL service, BellSouth's proposal does not open, irreversibly or otherwise, the local market to competition.

D. Discriminatory Access to Unbundled Loops

In addition to the other deficiencies discussed above, BellSouth is refusing to provide access to its network elements in a manner that allows for those elements' most efficient use. In particular, BellSouth's collocation requirement prevents MCI from obtaining reasonable, nondiscriminatory access to BellSouth's network in order to use unbundled loops and unbundled transport in combination. Efficient access to unbundled loops in a manner that allows them to be combined with unbundled transport is critically important to the development of widespread facilities-based competition. Henry Decl. ¶ 25.

Requiring CLECs to collocate in order to obtain access to unbundled loops and transport in combination is unreasonable and discriminatory because, in addition to all of the problems with collocation discussed above in Part II.A, it necessitates a minimum of four cross-connects -- at least two more than would be necessary absent the collocation requirement. Id. ¶¶ 28-29. Each cross-connect costs money and technician time, and each is an additional point of potential failure. Id. ¶ 29. This defect applies both to voice grade analog loops and to digital loops. Id. ¶¶ 30-34. BellSouth's insistence on collocation as a means of accessing network elements thus is highly inefficient, and it is also discriminatory, as BellSouth does not need to collocate and use unnecessary cross-connects in order to combine loops with transport. Id. ¶ 35.

E. Discriminatory Access to Directory Listings

BellSouth's directory assistance database is a network element required to be unbundled by section 251(c)(3). In addition, nondiscriminatory access to directory assistance services is a stand-alone requirement of section 271(c)(2)(B)(vii)(II) of the checklist. Finally, BellSouth's duty to provide dialing

parity includes the duty to provide nondiscriminatory access to directory listings. See 47 U.S.C. § 251(b)(3). Thus, three separate provisions of the checklist -- items (ii), (vii), and (xii) -- require BellSouth to provide CLECs with the listings in its directory assistance database on nondiscriminatory terms. The Commission also has repeatedly interpreted the Act to require access to *all* of the listings stored in an ILEC's database. See Second Report and Order ¶ 135 (any CLEC customer "should be able to access any listed number on a nondiscriminatory basis, notwithstanding . . . the identity of the telephone service provider for the customer whose directory listing is requested"); id. ¶ 142 (CLECs must have "the same quality of access to [directory assistance and directory listing] services that a LEC itself enjoys"); Letter from FCC Chairman William Kennard to Senators McCain and Brownback, at vii-2 (Mar. 20, 1998) ("to comply with the statutory nondiscrimination requirement, the BOC must . . . allow competing carriers to download all the information in the BOC's directory assistance database").

Despite the clarity of the law on this point, BellSouth will not provide its entire directory assistance database, but only the listings for customers of BellSouth itself and selected CLECs and independent local telephone companies. See BST Br. at 51; BST Varner Aff. ¶ 141. BellSouth's policy of refusing to provide all of the listings in its directory assistance database violates BellSouth's obligation to provide directory listings at parity. See 47 U.S.C. § 251(b)(3). While BellSouth's directory assistance operators have access to a complete database including listings of all CLECs' and independent telephone companies' customers, CLECs' operators do not. This is plainly not parity, and it impedes CLECs' ability to compete. See Henry Decl. ¶ 50.

In addition, the Commission recently found that BellSouth's competitive advantages in its comprehensive DA database resulted from its monopoly status, and that BellSouth's refusal to provide comprehensive DA listings constituted unjust and unreasonable discrimination. See In re: Bell Operating Companies, CC Docket No. 96-149, ¶ 82 (Feb. 6, 1998). As a condition of its grant of BellSouth's request to provide reverse DA services to its long distance affiliate, the FCC required BellSouth to

provide competitors with "all directory listing information that it uses to provide its interLATA reverse directory assistance services," and on the same terms as those on which its affiliate would gain access to the services. Id. Thus, the FCC acted to prevent BellSouth from extending the monopoly advantages embodied in its comprehensive DA database.

BellSouth claims that it is justified in not providing nondiscriminatory access to its directory assistance database because of contractual provisions that it says prevent it from disclosing other carriers' listings. See BST Br. at 51; Varner Aff. ¶ 141. Private contracts, however, cannot override BellSouth's plain obligations under federal law. See, e.g., Mineworkers v. Pennington, 381 U.S. 657, 665 (1965); Shelley v. Kraemer, 334 U.S. 1, 18-23 (1948) (private party cannot obtain judicial enforcement of contract inconsistent with federal law). BellSouth's supposed contractual restraints that "force" it to provide discriminatory directory assistance listing are no more valid than if BellSouth and a manufacturer agreed that BellSouth cannot lease loops or switching to CLECs. The requirements of the Act and the Commission's implementing regulations are binding and trump private agreements inconsistent with those requirements. If BellSouth erroneously claims that it is bound by these contracts despite federal law, or that it is unwilling or unable to renegotiate the confidentiality provisions, then it must end the discrimination by not using such listings itself.

F. Unbundled Trunk Ports

The Commission's rules make clear that the unbundled switching network element includes not only the switching functions resident in the switch, but also the ports, or access and egress elements, that connect lines and trunks to the switch. See 47 C.F.R. § 51.319(c). Thus, trunk ports, which allow trunks to be connected to a tandem switch or to the trunk side of a local switch, must be available on an unbundled basis. MCI is interested in obtaining trunk ports at BellSouth's end office and tandem switches, with the expectation of later adding dedicated transport, which MCI would obtain from BellSouth or from another carrier, between the switches. See Henry Decl. ¶ 56.

Toward this end, MCI asked BellSouth in December 1997 for the information necessary to order trunk ports at BellSouth's switches. Id. In response, MCI has received only stonewalling and delay. BellSouth's first formal response, after more than three months and a letter from MCI reiterating its request, stated that MCI indeed had the right to order trunk ports but that BellSouth needed more information to evaluate MCI's request. Id. This followed an exchange of e-mail messages in which BellSouth claimed that the complexity of the request required extensive evaluation before BellSouth could even provide a timeframe for response. Id. Only recently, personnel from MCI and BellSouth finally met to discuss this issue, and BellSouth stated that MCI would have to collocate at both the end office and the tandem in order to connect with BellSouth's facilities, and that, alternatively, MCI could purchase dedicated transport from BellSouth through a BFR. Id. Either option would entail significant and unnecessary expense and delay. Plainly, BellSouth has not provided an uncomplicated network element that MCI long ago requested. See SC Order ¶ 198 (BOC must show it can "timely provide" elements "in actual practice").

III. BELLSOUTH HAS NOT AGREED TO ANY OBJECTIVE PERFORMANCE STANDARDS AND SELF-EXECUTING REMEDIES, OR TO PROVIDE COMPLETE REPORTING NECESSARY TO ENSURE PROVISION OF SERVICE TO CLECS ON REASONABLE, NONDISCRIMINATORY TERMS

In recognition of the fact that CLECs are entirely dependent on monopoly providers for interconnection, resale, and unbundled elements, Congress required that BOCs provide access to all three means of entry on reasonable and nondiscriminatory terms. See, e.g., 47 U.S.C. §§ 251(b)(1), 251(c)(2), 251(c)(3), 251(c)(4); 271(c)(2)(B)(i), (ii), (xiv). These guarantees are hollow without objective proof and standards to demonstrate that the quality and timeliness of service BOCs provide to their captive CLEC customers are both reasonable and equal to the quality and timeliness of service the BOCs provide to themselves (including the BOCs' customers and affiliates).

It is critical to distinguish at the outset between a BOC's promise to produce reports (e.g., a monthly summary of the average length of time to provision a loop), and a commitment to abide by

performance standards, which actually require service to be provided at a specified level (e.g., loops requiring a premises visit must be provided within three business days; FOCs must be received on an average of four hours or less; at least 90% of out-of-service conditions must be resolved within four hours if a dispatch is required). As the Department of Justice has explained, performance standards are "commitments made by the BOC to meet specified levels of performance (preferably backed up by liquidated damages clauses)." DOJ La. Eval. at 31.

Absent standards governing when MCI will receive "raw materials" from its sole supplier, MCI cannot plan its internal operations or advise its own customers and potential customers when they can expect to receive service. It is not possible to compete on equal terms without such commitments from MCI's monopoly vendor. Performance standards are also essential to allow CLECs and regulators to hold the BOCs to a level of service that is reasonable and nondiscriminatory even after section 271 entry has been granted and the BOC has lost any incentive to cooperate with competing carriers such as MCI. Further, while parity standards fluctuate with BellSouth's reported performance for its end users, objective performance standards will ensure that CLECs will be provided with a consistent and adequate level of service -- a prerequisite to receiving service on "reasonable" terms as mandated under the Act.

A. The Commission and the Department of Justice Have Properly Emphasized the Importance of Performance Standards, Detailed Reports, and Self-Executing Enforcement Mechanisms to Fulfilling the Requirements of Section 271.

BellSouth's claim that it has addressed all the defects in its prior applications is disingenuous in light of its outright refusal to agree to performance standards and self-executing remedies, as well as complete reporting, despite the very clear pronouncements by the Commission and the Department on the importance of these requirements to a successful section 271 application. The Commission recognized that "proper performance measures with which to compare BOC retail and wholesale performance, and to measure exclusively wholesale performance, are a necessary prerequisite to demonstrating compliance with the Commission's 'nondiscrimination' and 'meaningful opportunity to

compete standards.'" Mich. Order ¶ 204 (citing DOJ Mich. Eval. 3). In addition, the Commission specifically emphasized the importance of performance standards, id. ¶ 393, as well as self-executing enforcement mechanisms to "ensure compliance with the established performance standards," recognizing that "[t]he absence of such enforcement mechanisms could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent." Id. ¶ 394.

Thus, as Chairman Kennard recently testified before Congress,

> The Commission will consider whether the BOC has agreed to performance monitoring and whether there are appropriate enforcement mechanisms that are sufficient to ensure compliance with established performance standards.[20/]

DOJ has been equally explicit in publicly advising BOCs of the importance of performance standards to a successful section 271 application. In its evaluation of BellSouth's first premature application for 271 authority in Louisiana, the Department emphasized that performance standards are critical to ensuring that BOCs do not engage in "backsliding" following 271 entry. DOJ La. Eval. 31-33. The Department concluded that because BellSouth had not agreed to protections against backsliding, it had not "fully and irreversibly opened [its market] to competition." Id. at 33.[21/]

20/ The Telecommunications Act of 1996, Moving Toward Competition Under Section 271, Hearings Before the Subcomm. on Antitrust, Business Right, and Competition, Committee on the Judiciary, 105th Cong. (March 4, 1998) (Statement of FCC Chairman William Kennard) (emphasis added).

21/ Similarly, the Texas PUC recently ordered SWBT to establish not only performance reporting requirements, but also performance standards and enforcement mechanisms "that will allow self-policing of the interconnection agreements after SWBT has been allowed to enter the long distance market." Texas PUC Order at 3 (ex. N). Indeed, it is so clear that reporting alone is insufficient to satisfy the Act that other BOCs have conceded the need for performance standards. Bell Atlantic admits that "[w]here there are processes or services for CLECs that have no retail analog, the parties should negotiate a reasonable standard that provides the CLEC with a 'meaningful opportunity to compete,' not try to invent non-existent functions and measures." Comments of Bell Atlantic, In re: Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, CC Docket No. 98-56 [hereinafter NPRM], at p.8 (filed June 1, 1998). Similarly, SBC concedes the need for objective performance standards for functions that

B. BellSouth Does Not Even Contend That It Is Bound By Enforceable Performance Standards Governing Its Provision of Service to CLECs.

Notwithstanding the clear pronouncements from this Commission and from DOJ on the need for performance standards, BellSouth does not so much as mention these requirements or cite to a single enforceable performance standard by which it is bound. In its cursory three-page discussion of performance requirements, BST Br. 63-65, BellSouth does not even claim that the interconnection agreements on which it relies contain binding performance standards. Nor does BellSouth claim that it is bound by performance standards in its SGAT, even if this were a Track B application. For this reason alone, the Commission should reject BellSouth's application.

MCI has continually pressed BellSouth to agree to binding performance standards, as opposed to mere reporting or unenforceable "targets" or "benchmarks." Henry Decl. ¶ 44.[22/] In January of this year, for example, MCI presented BellSouth with the performance requirements contained in version 6.1 of the Local Competition Users Group recommendations. See Henry Decl. Att. 1. After months passed with no progress at all in obtaining performance standards, MCI proposed in May 1998 that the parties negotiate one group of measurements at a time -- thus, the parties would start with a small group of measurements and agree on measurement methodologies, reporting requirements, standards, and remedies. BellSouth again was unwilling to discuss standards. When MCI inquired during negotiations in May whether BellSouth was opposed to performance standards as a matter of policy, BellSouth

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have no retail analog. Comments of SBC, NPRM, at 31. Although enforceable performance standards are needed for every function CLECs depend on a BOC to deliver, not simply for wholesale functions that have no retail analog, SBC's and Bell Atlantic's concession is significant in light of the fact that BellSouth has not committed to any performance standards, even where it contends there is no retail analog.

22/ BellSouth refers to unstated "benchmarks" without any explanation. BST Br. 65 (citing Varner Aff. ¶¶ 262-63). Whatever BellSouth may be referring to, it is clear that it has not cited to any enforceable performance standards. Any "benchmark" that BellSouth is free to miss without repercussion is not a standard at all. Nonbinding "benchmarks" or "targets" do not prevent BellSouth from providing inferior service to CLECs, and/or degrading the level of service to CLECs after it receives interLATA authority, as the Florida PSC has recognized. See Florida PSC Order No. PSC-97-1459-FOF-TL (Nov. 19, 1997) ("FPSC Order") at 183 (ex. U).

indicated that "at the time" it was opposed as a matter of policy to negotiation of performance standards, but that its formal policy would be set forth in its comments to the FCC's NPRM concerning performance standards. Henry Decl. ¶ 45.

As promised, BellSouth then stated its position on performance standards. In its comments on the NPRM, BellSouth argued that the FCC must steer clear of establishing performance standards because BellSouth had already negotiated performance standards on its own (which BellSouth knows is not accurate):

> Commission action is also not necessary here because CLECs are not left high and dry without these [FCC-imposed] standards. BellSouth has negotiated individual performance standards with individual CLECs according to their business needs and BellSouth's capabilities. The Commission's [sic] should refrain from setting performance standards and allow carriers to negotiate efficient market-based solutions.

BellSouth Reply Comments, NPRM, at 13 n.12 (filed July 6, 1998) (emphasis added). In addition, BellSouth told this Commission that the states have the exclusive authority to set performance standards, and claimed that the states "have traditionally set such standards." BellSouth Comments, NPRM, at 33 (filed June 1, 1998).

Having been rebuffed both in negotiations and in its effort to enlist this Commission to establish performance standards, MCI turned to the state commission -- the one regulatory body BellSouth deigned to concede had authority to adopt performance standards. In a filing with the LPSC, MCI urged the commission to establish performance standards.[23/] In response (only one day after it filed its section 271 application), having already refused voluntary negotiations and opposed FCC-imposed standards by pointing to state authority, BellSouth continued its shell game by telling the LPSC that it too should take no action to establish performance standards:

23/ MCI Telecommunications Corporation's Comments Regarding BellSouth Telecommunications, Inc.'s Proposed Modified Statement of Generally Available Terms and Conditions, In re: Consideration of BellSouth Telecommunications, Inc's Proposed Revisions to its Statement of Generally Available Terms and Conditions, LPSC Docket No. U-22252, at 6-17 (filed May 26, 1998) (BST App. C-1, Tab 148).

> MCI argued in its earlier comments in this proceeding that the Commission must develop performance standards or benchmarks. The LCUG has also contended before the FCC and the Georgia Commission that performance standards should be established whenever a reasonable ILEC analog does not exist. BellSouth submits that establishing any kind of idealized standards for performance at this time would be premature.[24/]

The Commission should not condone BellSouth's gamesmanship. BellSouth has refused to negotiate performance standards and has contested the FCC's authority to establish such standards. And now, in its state filing one day after it filed the instant application, BellSouth has objected to state imposition of performance standards. If establishing performance standards is "premature," as BellSouth claims, then so too is its section 271 application. The Commission should confirm that it meant what it said in requiring performance standards and self-executing remedies to ensure that local markets will remain open after 271 entry.[25/] BellSouth's application should be rejected on the independent ground that it has refused to be bound by any enforceable standards governing the delivery of services CLECs require to compete in local markets.

C. BellSouth Has Refused to Agree to Self-Executing Remedies Sufficient to Modify its Incentive to Discriminate Following 271 Entry.

The Commission has stated its firm agreement with the principle that "without enforcement mechanisms, reporting requirements are 'meaningless.'"[26/] In the context of section 271, the Commission has been equally clear that the absence of enforcement mechanisms "could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and

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24/ BellSouth's Comments on Interim Service Quality Performance Measurements, In re: BellSouth Telecommunications, Inc. Service Quality Performance Measurements, LPSC Docket U-22252, at 27 (filed July 10, 1998) (emphasis added) (LPSC Perform. Docket) (ex. V). MCI is not optimistic that the LPSC will take any action, however, other than rubber-stamping BellSouth's measurements proposal, as the LPSC voted on July 16 to support BellSouth's 271 application -- four days before reply testimony was even filed in the LPSC's performance docket.

25/ The Commission should be equally clear that BellSouth's reliance on "intervals" it may have established is irrelevant; an "interval" that is not backed by a remedy is not a standard at all, but is nothing more than an unenforceable target.

26/ In re: NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp. and its Subsidiaries, FCC 97-286 ¶ 208 (rel. Aug. 14, 1997) (emphasis added; citing ex parte submission of TCG Corp.).